

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE ESTATE OF LORETTE JOLLES
SHEFNER by and through its executors Mr. Barry
Shefner, Ms. Ariela Braun, and Mr. Leon Miller,
BARRY SHEFNER and THE ARIELA BRAUN
2002 FAMILY TRUST,

Plaintiffs,

-against-

MAURICE TUCHMAN, ESTI DUNOW, the
GALERIE CAZEAU-BÉRAUDIÈRE, the
NATIONAL GALLERY OF ART, LONTREL
TRADING, and JOHN DOES 1-10,

Defendants.

No. 08 CV 4443 (LTS) (DFE)

DECLARATION OF KARL GEERCKEN

KARL GEERCKEN, ESQ., being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice before this Court and am a partner of the law firm of Alston & Bird LLP (“Alston & Bird”), counsel for the Estate of Lorette Jolles Shefner, Barry Shefner and the Ariela Braun 2002 Family Trust, Plaintiffs in the above-captioned action.

2. I submit this declaration in support of Plaintiffs’ Motion for a Default Judgment (the “Motion”) against non-settling defendants the Galerie Cazeau-Béraudière and Lontrel Trading (the “Default Defendants”). I make this declaration based upon my personal knowledge and, where appropriate, a review of the relevant case files. The facts set forth herein are true and correct to the best of my knowledge and belief.

3. Attached hereto as Exhibit 1 is a true and correct copy of the Complaint, dated May 12, 2008, Docket Entry No. 1.

4. Attached hereto as Exhibit 2 is a true and correct copy of the Answer of defendants Maurice Tuchman (“Tuchman”) and Esti Dunow (“Dunow”), dated June 13, 2008, Docket Entry No. 11.

5. Attached hereto as Exhibit 3 is a true and correct copy of a March 26, 2004 letter from Tuchman and Dunow to Ms. Ariella Braun.

6. Attached hereto as Exhibit 4 is a true and correct copy of an April 13, 2004 facsimile from Dunow to Ms. Ariella Braun and its attached list of comparable sales.

7. Attached hereto as Exhibit 5 is a true and correct copy of a September 22, 2004 letter from Tuchman to Jeffrey Weiss of the National Gallery of Art (the “NGA”), bearing Bates numbers T-D 0027 to 0028.¹

8. Attached hereto as Exhibit 6 is a true and correct copy of a September 22, 2004 handwritten letter from Tuchman to Jeffrey Weiss of the NGA, bearing Bates numbers T-D 0026 to T-D 0026(c).

9. Attached hereto as Exhibit 7 is a true and correct copy of a May 7, 2004 facsimile from Dunow to Mr. Barry Shefner containing a proposed invoice draft for the Painting, bearing Bates numbers LJS 000025.²

10. Attached hereto as Exhibit 8 is a true and correct copy of a May 7, 2004 facsimile from Mr. Barry Shefner to Dunow and the attached conditional bill of sale, bearing Bates numbers LJS 000027 to LJS 000028.

¹ The prefix T-D refers to documents received from counsel for Defendants Tuchman and Dunow during discovery in this action.

² The prefix LJS refers to documents produced by Plaintiffs during discovery in this action.

11. Attached hereto as Exhibit 9 are true and correct copies of April 28, 2004 facsimiles between Dunow, the Galerie Cazeau-Béraudière and International Freight Logistics (“IFL”), and handwritten notes pertaining thereto produced by IFL.

12. Attached hereto as Exhibit 10 is a true and correct copy of correspondence between defendants Tuchman and Dunow and the Galerie Cazeau-Béraudière regarding transport of the Painting to New York and the handwritten instructions identifying Lontel Trading as the purchaser.

13. Attached hereto as Exhibit 11 is a true and correct copy of a May 14, 2004 facsimile from Dunow to Mr. Barry Shefner and the attached wire transfer order from Lontel Trading, bearing Bates numbers LJS 000035 to LJS 000036.

14. Attached hereto as Exhibit 12 is a true and correct copy of an April 26, 2004 facsimile from Plaintiffs to IFL, and the accompanying commercial invoice declaring the value of the Painting as \$1,000,000.00, bearing Bates numbers LJS000019 to LJS 000020.

15. Attached hereto as Exhibit 13 is a true and correct copy of an April 28, 2004 invoice produced by IFL to counsel for Plaintiffs declaring the value of the Painting as \$20,000.00 and a handwritten note to Affiliated Customs Brokers, bearing Bates numbers LJS 000060.

16. Attached hereto as Exhibit 14 is a true and correct copy of the NGA’s accession form for the Painting, bearing Bates number LJS 000075.

17. Attached hereto as Exhibit 15 is a true and correct copy of the October 20, 2004 invoice for sale from defendant the Galerie Cazeau-Béraudière to the NGA, bearing Bates numbers NGA 00002.³

18. Attached hereto as Exhibit 16 is a true and correct copy of a June 27, 2008 printout from the NGA's website identifying Tuchman as "former owner of" the Painting.

19. Attached hereto as Exhibit 17 is a true and correct copy of September 2004 correspondence and handwritten notes pertaining to shipping of the Painting to the NGA.

20. Attached hereto as Exhibit 18 is a true and correct copy of the Affidavit of Larry Dirgo, sworn to on May 29, 2008 and accompanying exhibits.

21. Attached hereto as Exhibit 19 are true and correct copies of excerpts from the Transcript of the November 21, 2008 Deposition of B. Shefner.

22. Attached hereto as Exhibit 20 is a true and correct copy of an administrative claim submission by Plaintiffs seeking return of the Painting.

23. Attached hereto as Exhibit 21 is a true and correct copy of the Stipulation and Order of Settlement and Dismissal as to defendants Tuchman, Dunow and the NGA, dated May 14, 2009, Docket Entry No. 45.

24. Attached hereto as Exhibit 22 is a true and correct copy of the Summons served upon defendant Lontrel Trading on May 12, 2008, Docket Entry No. 33.

25. Attached hereto as Exhibit 23 is a true and correct copy of the Summons served upon defendant Galerie Cazeau-Béraudière on May 12, 2008, Docket Entry No. 34.

³ The prefix NGA refers to documents received from counsel for Defendant the National Gallery of Art during discovery in this action.

26. Attached hereto as Exhibit 24 is a true and correct copy of the proof of service evidencing service of the Summons and Complaint on defendant Lontrel Trading a/k/a Lontel Trading a/k/a Alain Disch, Docket Entry No. 33.

27. Attached hereto as Exhibit 25 is a true and correct copy of the proof of service evidencing service of the Summons and Complaint on defendant Galerie Cazeau-Béraudière, Docket Entry No. 34.

28. Attached hereto as Exhibit 26 are true and correct copies of a Letter submitted by defendant Galerie Cazeau-Béraudière to the Court, dated October 24, 2008, Docket Entry No. 42, acknowledging the pendency of the action and the November 14, 2008 Memorandum and Order of the Honorable Douglas F. Eaton.

29. More than twenty (20) days have elapsed since the date on which the Default Defendants were served with the Summons and a copy of the Complaint; however, the Default Defendants failed to answer or otherwise respond to the Complaint.

30. Accordingly, Plaintiffs filed Requests for Entry of Default with the Clerk of the Court of the Southern District of New York against Lontrel Trading on September 17, 2008 and against Galerie Cazeau-Béraudière on September 24, 2008, Docket Entry Nos. 37 and 39. True and correct copies of the Requests for Entry of Default are attached hereto as Exhibit 27. In support of Plaintiffs' Requests for Entry of Default, Plaintiffs submitted two separate Declarations of F. Paul Greene, one supporting each Request for Entry of Default. True and correct copies of the Declarations, Docket Nos. 38 and 40, are attached hereto as Exhibit 28.

31. A Notation of Default was signed by the Clerk of the Court of the Southern District of New York against Galerie Cazeau-Béraudière on September 25, 2008. A Notation of Default was signed by the Clerk of the Court of the Southern District of New York against

Lontrel Trading on June 17, 2009. True and correct copies of the Notations of Default are attached hereto as Exhibit 29. Thus, Plaintiffs' Motion for Default Judgment pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure is both timely and appropriate.

32. Attached hereto as Exhibit 30 is a true and correct copy of the Seller's Warranty provided by Tuchman to the NGA, bearing Bates numbers NGA 00001, and a June 29, 2007 letter from the NGA to Mr. Barry Shefner referencing the Seller's Warranty.

33. Attached hereto as Exhibit 31 is a chart that was prepared under my supervision and sets forth the bases for the authenticity and admissibility of the other exhibits referenced herein.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
October 15, 2009


Karl Geercken